

Supreme Court, U. S.

FILED

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MICHAEL RODAK, JR., CLERK

IN THE
Supreme Court of the United States

OCTOBER TERM, 1977

No. **77-1140**

DANIEL R. W. DOYLE,

Petitioner,

VS.

BOARD OF FIRE AND POLICE COMMISSIONERS
OF THE VILLAGE OF SCHAUMBURG,

Respondent.

PETITION FOR A WRIT OF CERTIORARI
TO THE APPELLATE COURT
OF ILLINOIS FOR THE FIRST DISTRICT

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**BOARD OF FIRE AND POLICE COMMISSIONERS
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**PETITION FOR A WRIT OF CERTIORARI
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OF ILLINOIS FOR THE FIRST DISTRICT**

Petitioner, Daniel R. W. Doyle, respectfully prays that a Writ of Certiorari issue to review the judgment entered by the Appellate Court of Illinois, First Judicial District, Third Division, on April 27, 1977, Cause No. 76-1302, affirming the Circuit Court of Cook County, Chicago, Illinois, decision in case No. 76 L 2595, which decision held

that the petitioner was not entitled to legal counsel nor to cross examine adverse witnesses prior to being discharged as a police officer, since his status was that of a probationary employee; a petition for leave to appeal to the Supreme Court of Illinois was denied on September 30, 1977; a motion for reconsideration of the order denying the petition for leave to appeal was denied on November 16, 1977.

OPINIONS BELOW

On July 7, 1976, the Circuit Court of Cook County, Chicago, Illinois, entered a judgment against the petitioner and for the respondent sustaining the respondent's position that the petitioner, as a probationary police officer, was not entitled to legal counsel nor to cross examine adverse witnesses before the Board of Fire and Police Commissioners of the Village of Schaumburg, who discharged him from the Schaumburg Police Department after hearing evidence against him from other police personnel of that police department.

On April 27, 1977, the Illinois Appellate Court, First District, Third Division, sustained the judgment of the Circuit Court which opinion is reprinted in the Appendix at page 1a.

On September 30, 1977, by order of the Supreme Court of the State of Illinois, the petitioner's leave to appeal was denied; the order is reprinted in the Appendix at page 5a.

On November 16, 1977, by order of the Supreme Court of the State of Illinois, the petitioner's motion for reconsideration of the order of September 30, 1977, denying petition for leave to appeal, was denied; the order is reprinted in the Appendix at page 6a.

JURISDICTION

1. The judgment of the Appellate Court, First District, Third Division, was entered on April 27, 1977, affirming the Circuit Court of Cook County, Chicago, Illinois, decision that the denial to the petitioner of his right to legal counsel and of his right to cross examine adverse witnesses before the Board of Fire and Police Commissioners of the Village of Schaumburg was not a violation of his federal constitutional rights under the First, Fifth, Ninth and Fourteenth Amendments of the United States Constitution, since he was a probationary police officer who could be discharged without a hearing. Leave to appeal to the Supreme Court of Illinois was denied on September 30, 1977; motion for reconsideration of the September 30, 1977, order, denying leave to appeal, was denied on November 16, 1977.

2. The jurisdiction of this Court is invoked under the First, Fifth, Ninth and Fourteenth Amendments of the United States Constitution.

3. The federal question relating to the right to have legal counsel and the right to cross examine adverse witnesses was raised by the petitioner before the Board of Fire and Police Commissioners of the Village of Schaumburg and reasserted in the petitioner's complaint for administrative review filed in the Circuit Court of Cook County, Chicago, Illinois.

4. The petition for writ of certiorari was filed within 90 days from November 16, 1977, when the Supreme Court of Illinois entered an order denying the reconsideration of its order of September 30, 1977, which denied the leave to appeal.

QUESTION PRESENTED

Was the petitioner, as a probationary police officer, entitled to have legal counsel and entitled to cross examine adverse witnesses when he was requested to appear before the Board of Fire and Police Commissioners of the Village of Schaumburg in connection with his termination from the Schaumburg Police Department?

CONSTITUTIONAL PROVISIONS INVOLVED

Amendment I:

“Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.”

Amendment V:

“No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.”

Amendment IX:

“The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people.”

Amendment XIV:

“Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.”

STATEMENT OF THE CASE

That on December 4, 1974, petitioner was appointed as a probationary police officer of the Schaumburg Police Department.

That, prior to his discharge as a probationary police officer from the Schaumburg Police Department, petitioner had satisfactorily performed his duties as a probationary police officer.

That, on January 7, 1976, the petitioner received a letter from the Village of Schaumburg Board of Fire and Police Commissioners to attend a hearing on January 10, 1976, relating to the termination of his status as a probationary police officer.

That, prior to the commencement of the January 10, 1976 hearing, the petitioner was advised that he could not have legal counsel nor that he could cross examine witnesses, the denial of which rights constituted a violation of the First, Fifth, Ninth and Fourteenth Amendments of the United States Constitution.

That, upon conclusion of the January 10, 1976 hearing, the Board of Fire and Police Commissioners of the Village of Schaumburg advised the petitioner orally that his status as a probationary police officer would not be terminated and he would be appointed as a regular patrolman.

That on January 16, 1976, the petitioner received another letter from the Board of Fire and Police Commissioners of the Village of Schaumburg which had scheduled a second termination hearing for January 17, 1976.

At the January 17, 1976, hearing, the petitioner was denied the right to have legal counsel and was denied the right to cross examine the witnesses, in violation of his constitutional rights under the First, Fifth, Ninth and Fourteenth Amendments to the United States Constitution.

On January 19, 1976, the Board of Fire and Police Commissioners of the Village of Schaumburg mailed its order of discharge to the petitioner discharging him from the police department of the Village of Schaumburg.

REASONS FOR GRANTING THE WRIT

I.

THAT CURRENT ILLINOIS LAW PROVIDING FOR DISCHARGE OF PROBATIONARY POLICE OFFICERS WITHOUT A HEARING IS NOT APPLICABLE TO THE PETITIONER.

In sustaining the decision of the Circuit Court of Cook County, Chicago, Illinois, the Appellate Court of Illinois relies on two specific Illinois decisions; namely, *Romanik v. Board of Fire and Police Commissioners of East St. Louis*, 6 Ill. 2d 422 (1975) and *People v. Conlisk*, No. 59071 of the Appellate Court of Illinois, First District, February 19, 1976.

In the *Romanik* case, the Illinois Supreme Court has held that a probationary police officer does not have a vested right to a hearing prior to discharge.

In the *Conlisk* matter the Appellate Court of Illinois followed the legal principle enunciated in the *Romanik* decision.

However, both cases are distinguishable from that of the petitioner in that the police officers in *Romanik* and *Conlisk* were not required to appear before their respective police boards in defense of the charges against them.

Because the petitioner was requested by the Board of Fire and Police Commissioners of the Village of Schaumburg to appear before it on two separate occasions in connection with termination of his employment, this fact also negates the application of *Bishop v. Wood*, 44 L.W. 4820 (1976) as relied upon by the Appellate Court of Illinois, in this instance, since, in *Bishop*, there was no issue re-

lating to a police officer's appearance before a police board hearing evidence in connection with termination of employment.

Likewise, *Board of Regents of State Colleges v. David F. Roth*, 408 U.S. 564, 33 L. Ed. 2d 548, 92 S. Ct. 2701 (1972), as cited by the Illinois Appellate Court, has no application in that Roth, a non-tenured teacher was discharged without being required to appear before a school board hearing evidence in connection with his discharge.

Therefore, it is the contention of the petitioner that, when the Board of Fire and Police Commissioners of the Village of Schaumburg required him to appear in connection with hearing evidence as to termination of his employment, that action by the Board of Fire and Police Commissioners of the Village of Schaumburg set in motion the machinery for the application of due process and equal protection which required that he have the right to legal counsel and the right to cross examine adverse witnesses for the purpose of having a fair and impartial decision.

The petitioner stands in the same shoes as police officers in *Olschock v. The Village of Skokie*, 541 F. 2d 1254 (7th Cir. 1976) wherein a police officer has a property interest to a fair and impartial hearing.

In *Olschock* the Board of Fire and Police Commissioners of the Village of Skokie arbitrarily discharged a number of Skokie policemen simply because they were represented by legal counsel.

As in *Olschock*, the petitioner maintains that he, as a citizen of the United States, has a property interest to a fair and impartial hearing whether he be a public employee or not, or whether he be a permanent public employee or not, once a hearing has commenced.

II.

THAT, ONCE THE HEARING OF EVIDENCE HAD COMMENCED BEFORE THE BOARD OF FIRE AND POLICE COMMISSIONERS OF THE VILLAGE OF SCHAUMBURG IN CONNECTION WITH THE PETITIONER'S TERMINATION OF EMPLOYMENT, AS A PROBATIONARY POLICE OFFICER, HE HAD THE RIGHT TO HAVE LEGAL COUNSEL AND HAD THE RIGHT TO CROSS EXAMINE ADVERSE WITNESSES AND THAT THE DENIAL OF THOSE RIGHTS CONSTITUTE A VIOLATION OF HIS CONSTITUTIONAL RIGHTS UNDER THE FIRST, FIFTH, NINTH AND FOURTEENTH AMENDMENTS OF THE UNITED STATES CONSTITUTION.

When the Board of Fire and Police Commissioners of the Village of Schaumburg scheduled the hearing of evidence from adverse witnesses, the petitioner's constitutional right to have legal counsel and the right to cross examine the adverse witnesses became an integral part in providing the basis for a fair and impartial hearing.

In *Perry v. Sinderman*, 408 U.S. 593 (1972), the United States Supreme Court recognized the right of freedom of speech and due process under the First and Fourteenth Amendments of the United States Constitution even though Perry, as the petitioner, lacked tenure in terms of his employment.

Likewise, in *Saunders v. Cahill*, 359 F. Supp. 79 (1973) specifically on page 83 (D.C. Ill. 2973) the following language is very apropos as it concerns the petitioner:

"It is well settled that an individual, in assuming public employment, retains all the rights and protections otherwise afforded him by the United States Constitution. *Orr v. Thorpe*, 427 F.2d 1129 (5th Cir. 1970); *Pred v. Board of Public Instruction*, 415 F.2d 851 (5th

Cir. 1969). One of these constitutionally protected rights is that of freedom from arbitrary and unreasonable conduct on the part of the government. The philosophy that public employment preference for appointment to positions with the civil service have been and are being based upon political considerations.”

At the same time, *Dendor v. Board of Fire and Police Commissioners of Northbrook*, 11 Ill. 3d 582 (1973) vividly emphasizes the essence of the petitioner’s argument that he was entitled to have legal counsel and entitled to cross examine his adverse witnesses with these quoted observations from that opinion:

“We begin with the premise that although a public employee does not have a constitutional right to such employment, he cannot be barred or removed from that employment arbitrarily or in disregard of his constitutional rights. *Fort v. Civil Service Com. of County of Alameda* (1964) 38 Cal.Rptr. 625, 392 P. 2d 385. It can be said with equal certainty that acceptance of public employment is not an abandonment of constitutionally protected rights. (*Belshaw v. City of Berkeley* (1966), 246 Cal. App. 2d 493, 54 Cal. Rptr. 727.) With regard to the right of free speech, a public employee may speak freely, as long as he does not impair the administration of the public service in which he is engaged. *City of St. Petersburg, et al. v. Pfeiffer* (Fla. 1951), 52 So. 2d 796.”

As a result, the petitioner contends that the Board of Fire and Police Commissioners of the Village of Schaumburg violated his constitutional rights under the First, Fifth, Ninth and Fourteenth Amendments of the United States Constitution when the said board commenced hearing evidence against the petitioner by denying him his right to have legal counsel and to cross examine adverse witnesses.

CONCLUSION

For the reasons presented, it is respectfully requested that the petition for writ of certiorari be granted.

Respectfully submitted,

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Attorney for Petitioner

APPENDIX A

Opinion of the Appellate Court of Illinois

MR. JUSTICE McNAMARA delivered the opinion of the court:

The plaintiff, Daniel R. W. Doyle, appeals from an order of the circuit court of Cook County dismissing his complaint against the defendant, Board of Fire and Police Commissioners of the Village of Schaumburg (hereinafter "the board"). The complaint in three counts sought administrative review, declaratory judgment, and mandamus. In effect, plaintiff, a probationary police officer, sought reappointment to that position or appointment as a regular patrolman. The board's motion to dismiss the complaint stated in pertinent part that plaintiff as a probationary police officer served at the board's pleasure; that his dismissal was within the board's discretion; and that as a probationary officer plaintiff under settled Illinois law could not complain of such action. The facts as developed by the pleadings and attached exhibits are undisputed.

On December 4, 1974, plaintiff was appointed as a probationary police officer of the village. On January 7, 1976, the chairman of the board wrote plaintiff stating that the board was in receipt of several reports from supervising sergeants and shift commanders and of a letter from the chief of police requesting that plaintiff not be accepted as a regular patrolman. The letter further recited that the chairman had called a special meeting of the board for January 10 to discuss the reports and the chief's recommendation. The chairman requested that plaintiff attend the meeting. After the meeting on January 10, plaintiff

(Appellate Court Opinion)

was advised orally that his status as a probationary patrolman would not be terminated.

On January 16, 1976, the chairman of the board again wrote to plaintiff stating that the chief of police had advised the chairman that several misstatements and misrepresentations had been made at the meeting of January 10. The letter went on to recite that the chief requested plaintiff's dismissal and had asked the chairman for an opportunity for his supervisors and him to comment to the board in the same manner as plaintiff had at the meeting of January 10. The letter stated that the chairman had arranged for an open meeting to be held on January 17 to grant the chief's request. Plaintiff was invited to attend if he wished.

On January 19, 1976, the board mailed plaintiff an order of discharge. The board stated that after hearing from plaintiff, the chief, and eight named police officers, it had decided that plaintiff had made misrepresentations and in fact had lied to it. The board went on to say that it concurred in the chief's request to dismiss plaintiff as a probationary patrolman, and ordered plaintiff dismissed effective January 18. In his complaint, plaintiff alleged that he was denied legal counsel and the right to confront his witnesses by cross-examination.

Our supreme court has determined that a probationary police officer may be summarily dismissed without a hearing before discharge. (*Romanik v. Board of Fire and Police Commissioners of East St. Louis* (1975), 61 Ill. 2d 422, 338 N.E. 2d 397.) In *Romanik*, the court held that the provisions of Section 10-2.1-17 of the Board of Fire and Police Commission Act, Ill. Rev. Stat. 1975, ch. 24, par. 10-

(Appellate Court Opinion)

2.1-17, which provides that no officer may be dismissed except for cause upon written charges and after an opportunity to be heard at a fair trial and impartial hearing, do not extend to probationary officers. Also see *People ex rel Paczkowski v. Conlisk* (1976), 38 Ill. App. 3d 106, 347 N.E. 2d 96.

Plaintiff urges, however, that in the present case the board waived its right to dismiss him summarily by conducting what he characterizes as hearings before his discharge. We need not reach the issue of whether the placing of formal charges and conducting a formal hearing by a board in connection with the discharge of a probationary police officer would vest rights in such an officer not recognized in *Romanik*. The simple answer to plaintiff's argument is that no formal charges were placed and no formal discharge hearing occurred in the present case. The correspondence from the chairman of the board and the two meetings of January 10 and 17 merely amounted to an effort by the board to learn facts before acting on the requests of plaintiff's superiors to discharge him. In our view, it is ludicrous to suggest that the board's conduct in meeting with plaintiff before making a final determination, acts which could only benefit the plaintiff, changes the rule enunciated in *Romanik*. Plaintiff concedes that, absent the meetings of January 10 and 17, he would have no complaint about the board's procedures in discharging him. We hold, therefore, that the board acted without impropriety, and that the trial court correctly dismissed plaintiff's complaint.

The plaintiff's contention that he was deprived of his federal constitutional rights by the board's procedures also

(Appellate Court Opinion)

is without merit. It is grounded on his erroneous supposition that the board's correspondence and meetings amounted to formal charges and hearings. Moreover, in *Bishop v. Wood* (1976), 426 U.S. 341, the supreme court held that a permanent police officer's employment status was not a property interest under the due process clause, and that the court will look to state law in order to determine whether or not there is a violation of constitutional rights when an employee is terminated without a hearing. As we have noted, in Illinois, a probation officer has no right to a pre-termination hearing. Also see *Board of Regents v. Roth* (1972), 408 U.S. 564.

Accordingly, the order of the circuit court of Cook County dismissing plaintiff's complaint is affirmed.

Order affirmed.

JIGANTI, and MCGILLICUDDY, J.J., concur.

APPENDIX B

(Letterhead Of)
CLERK OF THE SUPREME COURT

September 30, 1977

Mr. Stanley H. Jakala
Attorney at Law
3219 Maple Avenue
Berwyn, Illinois 60402

No. 49655 - Daniel R. W. Doyle, petitioner, vs. Board of Fire and Police Commissioners of the Village of Schaumburg, respondent. Leave to appeal, Appellate Court, First District.

You are hereby notified that the Supreme Court today denied the petition for leave to appeal in the above entitled cause.

Very truly yours,
/s/ Clell L. Woods
Clerk of the Supreme Court

APPENDIX C

(Letterhead Of)

CLERK OF THE SUPREME COURT

November 16, 1977

Mr. Stanley H. Jakala
3219 Maple Avenue
Berwyn, IL 60402

In re: Daniel R. W. Doyle, petitioner, vs. Board of
Fire and Police Commissioners of the Village
of Schaumburg, respondent. No. 49655

Dear Mr. Jakala:

The Supreme Court today made the following announce-
ment concerning the above entitled cause:

The motion by petitioner for reconsideration of the
order denying petition for leave to appeal is denied.

Very truly yours,

/s/ Clell L. Woods

Clerk of the Supreme Court

CLW:jae
cc:Jack M. Siegel
